

venture partners. Indeed, Sprint admits that "pretexters persist without regard to the status of any carrier representative (whether an employee, a joint venture partner, or an independent contractor)."" To be sure, certain carriers claim that they do not provide the type of CPNI to joint venture partners and independent contractors that are attractive to pretexters. But even assuming this to be true for the moment, this does not appear to be the case across the entire industry.

47. Carriers also argue that there are more narrowly tailored alternatives to requiring opt-in consent for disclosures of CPNI to independent contractors and joint venture partners. First, Verizon suggests that the Commission could mandate password protection of call detail information.¹⁵⁶ While we agree that this is a good idea and adopt it in this Order," this step is plainly insufficient by itself to address all of the legitimate privacy concerns at issue in this proceeding. Such a step, for example, would do nothing to protect the unauthorized disclosure of call detail information in the possession of independent contractors and joint venture partners by insiders or computer intrusion, let alone the unauthorized disclosure of other forms of CPNI.

48. Second, Verizon argues that it would be sufficient to adopt an opt-in regime only for call detail information shared with independent contractors and joint venture partners.¹⁵⁸ We likewise conclude that this alternative would be inadequate. While we recognize that unauthorized disclosure of call detail information is a significant problem, all CPNI constitutes sensitive information that is protected under the Communications Act and our rules.¹⁵⁹ Moreover, we note that Congress did not distinguish between call detail and non-call detail information in the Telephone Records and Privacy Protection Act of 2006.¹⁶⁰ Verizon's premise that non-call detail information is not sufficiently sensitive to warrant an opt-in requirement is therefore incorrect. For example, information about a customer's calling plan may be highly sensitive. T-Mobile currently offers a "myFaves" plan that allows customers to make unlimited calls to five "myFaves" contacts for a flat monthly charge, and Alltel offers a similar calling plan (the My Circle Plan) that allows for unlimited calls to ten contacts." While the identity of such contacts would not constitute call detail information, such information is no doubt highly personal and would be of significant interest to those seeking to invade another's privacy. As a result, we believe that carriers should be required to obtain a customer's explicit consent before such information is shared with independent contractors or joint venture partners and thus placed at greater risk of unauthorized disclosure.

49. Finally, carriers suggest that the Commission could mandate that carriers sharing CPNI with joint venture partners and independent contractors implement additional contractual safeguards.¹⁶² We again conclude that this alternative would not adequately vindicate our interest in protecting consumers'

¹⁵⁵ See Sprint Nextel Jan. 26, 2007 *Ex Parte* Letter at 1.

¹⁵⁶ Verizon Jan. 29, 2007 *Ex Parte* Letter at 22, 26.

¹⁵⁷ See *supra* paras. 11, 13-15, 18-20.

¹⁵⁸ Verizon Jan. 29, 2007 *Ex Parte* Letter at 22, 26.

¹⁵⁹ See 47 U.S.C. § 222(a); 47 C.F.R. § 64.2007(b)(3).

¹⁶⁰ See 18 U.S.C. § 1039 (prohibiting the sale, transfer, purchase or receipt of "confidential phone records information" as defined in subsection (h)(1)).

¹⁶¹ See <http://www.t-mobile.com/shop/plans/detail.aspx?id=9d4cbda1-c54e-496c-b11f-d8b6da5798b9> (describing a myFaves plan); <http://www.alltelcircle.com/about.php> (comparing my circle plan to competitors offerings). Under these plans, the telephone numbers of favorite contacts are CPNI because they relate to the service to which the customer subscribes. See 47 U.S.C. § 222(h)(1)(A).

¹⁶² See, e.g., Letter from Kent Nakamura, Vice President and Chief Privacy Officer, Sprint Nextel, to Marlene Dortch, Secretary, FCC, CC Docket No. 96-115 at 1 (filed Jan. 22, 2007).

privacy. Further contractual safeguards would not change the fact that the risk of unauthorized CPNI disclosures increases when such information is provided by a carrier to a joint venture partner or independent contractor. Indeed, in light of the record developed in this proceeding, it is quite apparent that safeguards implemented by carriers themselves often fail to prevent unauthorized disclosures of CPNI.¹⁶³ It is for this reason that we believe that a carrier should be required to obtain explicit consent from its customer before that customer's CPNI is sent outside of the company for marketing purposes.

S0. Grandfathering of Previously Obtained CPNI Approvals. To the extent that carriers voluntarily obtained opt-in approval from their customers for the disclosure of customers' CPNI to a joint venture partner or independent contractor for the purposes of marketing communications-related services to a customer prior to the adoption of this Order, those carriers can continue to use those approvals.

E. Annual Certification Filing

S1. We adopt the Commission's tentative conclusion and amend our rules to require carriers to file their annual CPNI certification with the Commission, including an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI.¹⁶⁴ We find that this amendment to the Commission's rules is an appropriate measure and will ensure that carriers regularly focus their attention on their duty to safeguard CPNI. Additionally, we find that this modification to our rules will remind carriers of the Commission's oversight and high priority regarding carrier performance in this area. Further, with this filing, the Commission will be better able to monitor the industry's response to CPNI privacy issues and to take any necessary steps to ensure that carriers are managing customer CPNI securely.¹⁶⁵

S2. Under the Commission's existing CPNI regulations, each telecommunications carrier must have an officer, as an agent of the carrier, sign a compliance certificate on an annual basis stating that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the Commission's CPNI rules and to make that certification available to the public.¹⁶⁶ While carriers currently are required to certify annually that their operating procedures are

¹⁶³ See, e.g., NASUCA Reply at 20.

¹⁶⁴ See *Notice*, 21 FCC Rcd at 1793, para. 29. By the term "any action," we mean that carriers should report on proceedings instituted or petitions filed by a carrier at either state commissions, the court system, or at the Commission against data brokers. For the summary of customer complaints, carriers must report on the number of customer complaints a carrier has received related to unauthorized access to CPNI, or unauthorized disclosure of CPNI, broken down by category of complaint. e.g., instances of improper access by employees, instances of improper disclosure to individuals not authorized to receive the information, or instances of improper access to online information by individuals not authorized to view the information. Additionally, carriers must report on any information that they have with respect to the processes pretexters are using to attempt to access CPNI, and what steps carriers are taking to protect CPNI.

¹⁶⁵ See, e.g., AT&T Comments at 14 (noting that the Commission could "reasonably conclude" that carriers should annually filing their certifications with the Commission to enable the Commission to more effectively monitor CPNI security measures). For this reason, we disagree with commenters that believe that the certification should not be filed with the Commission. See, e.g., RCA Comments at 5 (arguing that the annual filing of the certification with an explanation of the carrier's actions against data brokers and a summary of the CPNI-related consumer complaints is unjustified).

¹⁶⁶ See 47 C.F.R. § 64.2009(e); see also *CPNI Order*, 13 FCC Rcd 8061, 8199, para. 201 (1998) (requiring the annual certification to be made publicly available). As a reminder, the existing rules require the certification to be executed by an officer of the carrier. The officer of the carrier must state in the certification that he or she has "personal knowledge" that the carrier has established procedures adequate to ensure compliance with the Commission's CPNI rules. Further, the carrier must also provide an accompanying statement explaining how the carrier's procedures ensure that the carrier is or is not in compliance with the requirements set forth in sections 64.2100 through 64.2900 of the Commission's rules. For example, the carrier may explain the training it

adequate to ensure compliance with the Commission's CPNI rules, the failure of carriers to make this annual certification in their own public file, and the evidence EPIC introduced into the record regarding the industry-wide problem of pretexting, suggests that certain carriers have been less than vigilant concerning the safeguarding of CPNI.¹⁶⁷

53. We find that carriers should be required to make this filing annually with the Enforcement Bureau on, or before, March 1, in EB Docket No. 06-36, for data pertaining to the previous calendar year.¹⁶⁸ We believe that this deadline will provide carriers with ample opportunity to review their own CPNI protection programs and ensure the adequacy of their defenses against fraudulent attempts to access customers' private data.¹⁶⁹ Finally, this deadline will allow carriers sufficient time to review their filings without the certification being overshadowed by other annual filing requirements.

F. Extension of CPNI Requirements to Providers of Interconnected VoIP Service

54. We extend the application of the Commission's CPNI rules to providers of interconnected VoIP service.¹⁷⁰ In the *IP-Enabled Services Notice* and the *EPIC CPNI Notice*, the Commission sought

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employees receive regarding protection of CPNI, the disciplinary process applicable to improper disclosure of CPNI, the process used to ensure that opt-out elections are recorded and followed, and other measures relevant to demonstrating compliance with the CPNI rules. Finally, we remind carriers that the certification is required even if the carrier does not use CPNI for marketing purposes, as the obligation to protect CPNI from improper disclosure exists regardless of whether the carrier uses it for marketing purposes.

¹⁶⁷ See, e.g., *Alltel Corporation Apparent Liability for Forfeiture*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 746 (2006); *AT&T Inc. Apparent Liability for Forfeiture*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 751 (2006); *Cbeyond Communications, LLC Apparent Liability for Forfeiture*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 4316 (2006). Because carriers currently are required to make such a certification, requiring that this filing be made to the Commission will be minimally burdensome to the industry. See, e.g., AT&T Comments at 14; Cingular Comments at 17; CTIA Comments at 2-3; Kim Comments at 11; OPASTCO Comments at 2, 8-9; Verizon Comments at 9; Verizon Wireless Comments at 19; MetroPCS Reply at 18. The additional information required by the expanded reporting obligation should not require carriers to make significant changes to their procedures, and some carriers report that they already keep track of CPNI-related complaints and actions taken against data brokers. See, e.g., Kim Comments at 11; Phan Comments at 6; Verizon Comments at 9; Verizon Wireless Comments at 19. We disagree with commenters who assert that such a filing requirement will disadvantage small and regional carriers. We are equally concerned about the privacy of customers of small and regional carriers as we are about the privacy of customers of larger carriers and find that the benefits of customer privacy protection are significantly outweighed by a carrier's costs to implement these CPNI rules. See, e.g., EWA Comments at 5; MetroPCS Reply at 18. We recognize carrier concerns about providing a roadmap for pretexters with this annual filing, and thus we will allow carriers to submit their certifications confidentially with the Commission. See, e.g., AT&T Comments at 15; Cingular Comments at 16-17; CTIA Comments at 9-10; Phan Comments at 15. Carriers should supply the Commission with redacted and non-redacted versions of their filings. A carrier may only redact specific data about its actual security procedures and actual complaints in its filing. A carrier may not redact summary data about the number or type of customer complaints or other aggregate or general data because we believe it is in the public's interest to have access to such data when selecting a service provider. Members of the public will have the opportunity to review redacted filings and bring to the attention of the Commission any potential violations or concerns identified in those filings.

¹⁶⁸ See, e.g., Joint Commenters Reply at 9 (requesting a date certain for this annual filing for administrative convenience).

¹⁶⁹ See, e.g., AT&T Comments at 15; Cingular Comments at 17; T-Mobile Comments at 13; Verizon Comments at 9.

¹⁷⁰ The Commission defines "interconnected VoIP service" as "a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on

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comment on whether to extend the CPNI requirements to VoIP service providers.¹⁷¹ Since we have not decided whether interconnected VoIP services are telecommunications services or information services as those terms are defined in the Act, nor do we do so today,¹⁷² we analyze the issues addressed in this Order under our Title I ancillary jurisdiction to encompass both types of service.¹⁷³ If the Commission later classifies interconnected VoIP service as a telecommunications service, the providers of interconnected VoIP services would be subject to the requirements of section 222 and the Commission's CPNI rules as telecommunications carriers under Title II.¹⁷⁴

55. We conclude that we have authority under Title I of the Act to impose CPNI requirements on providers of interconnected VoIP service. Ancillary jurisdiction may be employed, in the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated¹⁷⁵ and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [its]

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the public switched telephone network and to terminate calls to the public switched telephone network." 41 C.F.R. § 9.3; see also *IP-Enabled Services: ERII Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257-57, para. 24 (2005) (*VoIP 911 Order*), *aff'd*, *Nuvio Corp.*, 1 FCC No. 473 F.3d 302 (D.C. Cir. 2006). We emphasize that interconnected VoIP service offers the capability for users to receive calls from and terminate calls to the PSTN; the obligations we establish apply to all VoIP communications made using an interconnected VoIP service, even those that do not involve the PSTN. See, e.g., *VoIP 911 Order*, 20 FCC Rcd at 10257-58, para. 24. As we have in the past, we limit our extension of the rules to interconnected VoIP service providers because we continue to believe that consumers have a reasonable expectation that such services are replacements for "regular telephone" service. See, e.g., *id.* at 10256, para. 23; see also Internet Companies Comments at 22; Time Warner Comments at 13.

¹⁷¹ See *IP-Enabled Services Notice*, 19 FCC Rcd at 4910, para. 71; *EPIC CPNI Notice*, 21 FCC Rcd at 1793 para. 28.

¹⁷² See 47 U.S.C. § 153(20), (46) (defining "information service" and "telecommunications service").

¹⁷³ See, e.g., *VoIP 911 Order*, 20 FCC Rcd at 10261-65, paras. 26-32. We therefore disagree with commenters that we do not have statutory authority to extend the CPNI requirements to interconnected VoIP service providers. See, e.g., Charter Comments at 36-37; Internet Companies Comments at 17-22.

¹⁷⁴ 47 U.S.C. § 222.

¹⁷⁵ See *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (*Southwestern Cable*). *Southwestern Cable*, the lead case on the ancillary jurisdiction doctrine, upheld certain regulations applied to cable television systems at a time before the Commission had an express congressional grant of regulatory authority over that medium. See *id.* at 170-71. In *Midwest Video I*, the Supreme Court expanded upon its holding in *Southwestern Cable*. The plurality stated that "the critical question in this case is whether the Commission has reasonably determined that its origination rule will 'further the achievement of long-established regulatory goals in the field of television broadcasting by increasing the number of outlets for community self-expression and augmenting the public's choice of programs and types of services.'" *United States v. Midwest Video Corp.*, 406 U.S. 649, 667-68 (1972) (*Midwest Video I*) (quoting Amendment & Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals, Docket No. 18397, First Report and Order, 20 FCC 2d 201, 202 (1969) (*CATV First Report and Order*)). The Court later restricted the scope of *Midwest Video I* by finding that if the basis for jurisdiction over cable is that the authority is ancillary to the regulation of broadcasting, the cable regulation cannot be antithetical to a basic regulatory parameter established for broadcast. See *FCC v. Midwest Video Corp.*, 440 U.S. 679, 700 (1979) (*Midwest Video II*); see also *American Library Ass'n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005) (holding that the Commission lacked authority to impose broadcast content redistribution rules on equipment manufacturers using ancillary jurisdiction because the equipment at issue was not subject to the Commission's subject matter jurisdiction over wire and radio communications).

various responsibilities.”¹⁷⁶ Both predicates for ancillary jurisdiction are satisfied here. First, as we concluded in the *Interim USF Order* and *VoIP 911 Order*, interconnected VoIP services fall within the subject matter jurisdiction granted to us in the Act.” Second, our analysis requires us to evaluate whether imposing CPNI obligations is reasonably ancillary to the effective performance of the Commission’s various responsibilities. Based on the record in this matter, we find that sections 222 and 1 of the Act provide the requisite nexus, with additional support from section 706.

56. Section 222 requires telecommunications carriers to protect the confidentiality of CPNI, and the Commission has adopted detailed regulations to help clarify this duty.¹⁷⁸ The Commission already has determined that interconnected VoIP service “is increasingly used to replace analog voice service” – a trend that we expect will continue.¹⁷⁹ It therefore seems reasonable for American consumers to expect that their telephone calls are private irrespective of whether the call is made using the services of a wireline carrier, a wireless carrier, or an interconnected VoIP provider, given that these services, from the perspective of a customer making an ordinary telephone call, are virtually indistinguishable.”

57. Moreover, extending section 222’s protections to interconnected VoIP service customers is necessary to protect the privacy of wireline and wireless customers that place calls to or receive calls from interconnected VoIP customers. The CPNI of interconnected VoIP customers includes call detail information concerning all calling and called parties. Thus, by protecting from inadvertent disclosure the CPNI of interconnected VoIP customers, the Commission will more effectively protect the privacy of wireline and wireless service customers. We therefore find that the extension of the CPNI privacy requirements to providers of interconnected VoIP service is reasonably ancillary to the effective performance of the Commission’s duty to protect the CPNI of all telecommunications customers under Title II.

58. Section 1 of the Act charges the Commission with responsibility for making available “a rapid, efficient, Nation-wide, and world-wide wire and radio communication service . . . for the purpose

¹⁷⁶ *Southwestern Cable*, 392 U.S. at 178

¹⁷⁷ See *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service: 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and Nonh American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability: Truth-in-Billing and Billing Format; IP-Enabled Services*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7542, para. 47 (2006) (*Interim USF Order*), appeal pending, *Vonage Holdings Corp. v. FCC*, No. 06-1276 (D.C. Cir. filed July 18, 2006); *VoIP 911 Order*, 20 FCC Rcd at 10261-62, para. 28 (“[I]nterconnected VoIP services are covered by the statutory definitions of ‘wire communication’ and/or ‘radio communication’ because they involve ‘transmission of (voice) by aid of wire, cable, or other like connection . . . and/or ‘transmission by radio . . .’ of voice. Therefore, these services come within the scope of the Commission’s subject matter jurisdiction granted in section 2(a) of the Act.”). This determination was not challenged in the appeal of the *VoIP 911 Order*. See *supra* note 170.

¹⁷⁸ 47 U.S.C. § 222(a), (c)(1); see also 47 C.F.R. § 64.2001 *et seq.*

¹⁷⁹ See *Interim USF Order*, 21 FCC Rcd at 7542-43, para. 48 (citing *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 15009-10, para. 42 (2005), *aff’d*, *American Council on Education v. FCC*, 451 F.3d 226 (D.C. Cir. 2006)); see also Attorneys General Comments at 11 (arguing that VoIP customers have the same privacy concerns as wireline and wireless customers).

¹⁸⁰ To be clear, a service offering is “interconnected VoIP” if it offers the capability for users to receive calls from and terminate calls to the PSTN regardless of whether access to the PSTN is directly through the interconnected VoIP provider or through arrangements with a third party.

of promoting safety of life and property through the use of wire and radio communication."¹⁸¹ In light of this statutory mandate in conjunction with the recent real-life implications of the unauthorized release of CPNI, protecting a consumer's private information continues to be one of the Commission's public safety responsibilities.¹⁸² If we failed to exercise our responsibilities under sections 222 and 1 of the Act with respect to customers of interconnected VoIP service, a significant number of American consumers might suffer a loss of privacy and/or safety resulting from unauthorized disclosure of their CPNI – and be harmed by this loss. Therefore, we believe that extending the CPNI obligations to interconnected VoIP service providers is "reasonably ancillary to the effective performance of [our] responsibilities" under sections 222 and 1 of the Act, and "will further the achievement of long-established regulatory goals" to protect the confidentiality of CPNI.¹⁸⁴

59. We also are guided by section 706 of the Act, which, among other things, directs the Commission to encourage the deployment of advanced telecommunications capability to all Americans by using measures that "promote competition in the local telecommunications market."¹⁸⁶ The protection of CPNI may spur consumer demand for interconnected VoIP services, in turn driving demand for broadband connections, and consequently encouraging more broadband investment and deployment consistent with the goals of section 706.¹⁸⁷ Thus, pursuant to our ancillary jurisdiction, we extend the CPNI obligations to providers of interconnected VoIP services.¹⁸⁸

¹⁸¹ 47 U.S.C. § 151 (emphasis added).

¹⁸² See 47 U.S.C. § 222; EPIC Petition at 5-10.

¹⁸³ *Southwestern Cable*, 392 U.S. at 178.

¹⁸⁴ *Midwest Video I*, 406 U.S. at 667-68 (quoting *CATV First Report and Order*, 20 FCC 2d at 202).

¹⁸⁵ See, e.g., AARP Comments at 2 (WC Docket No. 04-36); Arizona Commission Comments at 15-16 (WC Docket No. 04-36); California PSC Comments at 14 (WC Docket No. 04-36); CenturyTel Comments at 22-23 (WC Docket No. 04-36); CWA Comments at 23 (WC Docket No. 04-36); Missouri PSC Comments at 21 (WC Docket No. 04-36); NCL Comments at 5 (WC Docket No. 04-36); New Jersey Ratepayer Advocate Comments at 39-43 (WC Docket No. 04-36); New York Attorney General Comments at 10-11 (WC Docket No. 04-36); Ohio PUC Comments at 37-38 (WC Docket No. 04-36); Rural Carriers Comments at 7-8 (WC Docket No. 04-36); Texas Attorney General Comments at 20-21 (WC Docket No. 04-36); Time Warner Comments at 31-32 (WC Docket No. 04-36); DOI Comments at 17-20 (WC Docket No. 04-36); APT Reply at 8-9 (WC Docket No. 04-36). We disagree with commenters that argue there is no clear justification for CPNI protections, including because there is sufficient competition for such services. See, e.g., 8x8 Comments at 29 (WC Docket No. 04-36); AT&T Comments at 41 (WC Docket No. 04-36); SBC Comments at 124-25 (WC Docket No. 04-36); ALTS Reply at 1-2 (WC Docket No. 04-36). We find on the contrary that the continuing trend toward customer use of these services as a replacement for analog voice services in large measure justifies the extension of our rules to these services to protect consumer privacy.

¹⁸⁶ 47 U.S.C. § 157 nt.

¹⁸⁷ See *Availability of Advanced Telecommunications Capabilities in the United States*, Fourth Report to Congress, 20 FCC Rcd 20540, 20578 (2004) ("[S]ubscribership to broadband services will increase in the future as new applications that require broadband access, such as VoIP, are introduced into the marketplace, and consumers become more aware of such applications.") (emphasis added).

¹⁸⁸ We do not believe that our actions today are in conflict or otherwise inconsistent with any provision of the Act. We acknowledge that section 230 of the Act provides that "[i]t is the policy of the United States – to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. § 230(b)(2). We do not believe, however, that this congressional policy statement precludes us from extending the CPNI obligations to interconnected VoIP service providers here. We note that the Commission's discussion of section 230 in the *Vonage Order* as cautioning against regulation was limited to "traditional common carrier economic regulations." *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum

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G. Preemption

60. We reject commenter requests to preempt all state CPNI obligations¹⁸⁹ because we agree with commenters that assert we should **allow** states **to** also create rules for protecting CPNI.¹⁹⁰ We recognize that many states already have laws relating to safeguarding personal information such as CPNI.¹⁹¹ To the extent those laws do not create a conflict with federal requirements, carriers are able to comply with federal law and state **law**. Should a carrier find that it is unable **to** comply simultaneously with the Commission's rules and with the **laws** of another jurisdiction, the carrier should bring the matter to our attention in **an** appropriate petition."

H. Implementation

61. In light of the importance of this issue to the public interest,¹⁹³ we require that our rules become effective *within* an aggressively shown amount **of** time because of the important consumer and public safety considerations raised by pretexting that demand near immediate **action**.¹⁹⁴ The rules we adopt in this Order, however, are subject to approval by the Office of Management and Budget (OMB). Thus, our rules become effective six months after the Order's effective date or on receipt of OMB

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Opinion and Order, 19 FCC Rcd 22404, 22426, para. 35 (2004) (*Vonage Order*), *appeal pending*, *National Ass'n of State Util. Consumer Advocates v. FCC*, No. 05-71238 (9th Cir. filed Feb. 22, 2005).

¹⁸⁹ See, e.g., Centennial Comments at 5-6; USISPA Comments at 7; Verizon Wireless Comments at 14-16; Charter Reply at 20-21.

¹⁹⁰ See, e.g., Ohio PUC Comments at 32; PaPUC Comments at 3-4; NASUCA Reply at 28-30.

¹⁹¹ See, e.g., Letter from Richard T. Ellis, Director - Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-115 (filed Feb. 6, 2004) (Verizon Feb. 6 *Ex Parte* Letter) (expressing concern regarding state regulations of CPNI that are inconsistent with federal CPNI rules and citing the rules of California, Oregon and Washington). Verizon has not asked the Commission specifically to rule on whether those states' CPNI regulations should be preempted, and apparently obtained the preemption it sought regarding the Washington CPNI regulations from a U.S. District Court in Washington. See *id.*, Attach.; see also *Ariz. Rev. Stat. § 40-202(C)(5)* (conferring authority on the Arizona Corporation Commission to adopt rules that "customer information, account information and related proprietary information are confidential unless specifically waived by the customer in writing").

¹⁹² See, e.g., Dobson Reply at 6; Verizon Wireless Reply at 13-14. The Commission reviews petitions for preemption of CPNI rules on a case-by-case basis. See *Third Report and Order*, 17 FCC Rcd at 14890-93, paras. 69-74 ("By reviewing requests for preemption on a case-by-case basis, we will be able to make preemption decisions based on the factual circumstances as they exist at the time and on a full and a complete record."). Verizon and AT&T Wireless Services filed petitions for reconsideration of the *Third Report and Order* regarding preemption of state CPNI regulation. See Verizon Petition for Reconsideration (filed Oct. 21, 2002); AT&T Wireless Services, Inc. Petition for Reconsideration (filed Oct. 21, 2002). This Order does not constitute a decision on the merits of those petitions.

¹⁹³ See, e.g., Ellen Nakashima, *HP Scandal Shines Light on a Simple, Treacherous Arr.* WASH. POST, Sept. 19, 2006, D1. Carriers of course may begin instituting our rules earlier to protect their customers' CPNI.

¹⁹⁴ See 47 C.F.R. § 1.427(b). For this reason, we reject requests for longer implementation periods. See, e.g., Letter from Kent Y. Nakamura, Vice President and Chief Privacy Officer, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-115 at 2 (filed Dec. 11, 2006); Letter from Donna Epps, Vice President Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-115 at 1-4 (filed Dec. 22, 2006); Letter from Anisa A. Latif, Associate Director Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-115 at 1 (filed Jan. 10, 2007); Letter from Indra Sehdev Chalk, Counsel for USTelecom, to Marlene Dortch, Secretary, FCC, CC Docket No. 96-115 at 1 (filed Jan. 18, 2007); Letter from William F. Maher, Counsel for T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-115 at 3 (filed Jan. 25, 2007).

approval, as required by the Paperwork Reduction Act." whichever is later. We will issue a Public Notice when OMB approval is received. For carriers satisfying the definition of a "small entity" or a "small business concern" under the Regulatory Flexibility Act or Small Business Act,¹⁹⁶ we provide an additional six months to implement the rules pertaining to the online carrier authentication requirements."

62. We find that the requirements we adopt in this Order most appropriately respond to actions by wrongdoers to obtain unauthorized access to CPNI, and carriers' failures to adequately protect CPNI in violation of their section 222 duty. This order balances those actions and inactions against the privacy concerns of all Americans. By requiring carriers (including interconnected VoIP service providers) to implement CPNI protections as a top priority, we hope to minimize the likelihood of future unauthorized disclosures of consumer's CPNI.

I. Enforcement

63. We take seriously the protection of customers' private information and commit to remaining vigilant to ensure compliance with applicable privacy laws within our jurisdiction. One way in which we will help protect consumer privacy is through strong enforcement measures. When investigating compliance with the rules and statutory obligations, the Commission will consider whether the carrier has taken reasonable precautions to prevent the unauthorized disclosure of a customer's CPNI. Specifically, we hereby put carriers on notice that the Commission henceforth will infer from evidence that a pretexter has obtained unauthorized access to a customer's CPNI that the carrier did not sufficiently protect that customer's CPNI. A carrier then must demonstrate that the steps it has taken to protect CPNI from unauthorized disclosure, including the carrier's policies and procedures, are reasonable in light of the threat posed by pretexting and the sensitivity of the customer information at issue. If the Commission finds at the conclusion of its investigation that the carrier indeed has not taken sufficient steps adequately to protect the privacy of CPNI, the Commission may sanction it for this oversight, including through forfeiture.

64. We offer here additional guidance regarding the Commission's expectations that will inform our investigations. We fully expect carriers to take every reasonable precaution to protect the confidentiality of proprietary or personal customer information.¹⁹⁸ Of course, we require carriers to implement the specific minimum requirements set forth in the Commission's rules. We further expect

¹⁹⁵ While the recent passage of the Telephone Records and Privacy Protection Act of 2006, 18 U.S.C. § 1039, which imposes new criminal penalties against pretexters, should reduce pretexting, we believe that our Order today is necessary to protect customer privacy and help bring an end to the unauthorized access to CPNI. We disagree with commenters that argue that we should allow the law to take effect and reassess the situation later because the actions we take today go beyond the legislation to ensure the privacy of CPNI by focusing on carriers that have not vigilantly discharged their obligations under section 222 to adequately protect CPNI. See, e.g., Dobson Comments at 3; COMPTel Dec. 18, 2006 Ex Parte Letter at 1.

¹⁹⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. § 601(6). The term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act. 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions in the Federal Register."

¹⁹⁷ We find this implementation period is reasonable for small carriers to avoid disruption and inconvenience to consumers.

¹⁹⁸ See 47 U.S.C. § 222(a)

carriers to take additional steps to protect the privacy of CPNI to the extent such additional measures are feasible for a particular carrier. For instance, and as discussed above, although we decline to impose audit trail obligations on carriers at this time, we expect carriers through audits or other measures to take reasonable measures to discover and protect against activity that is indicative of pretexting. Similarly, although we do not specifically require carriers to encrypt their customers' CPNI, we expect a carrier to encrypt its CPNI databases if doing so would provide significant additional protection against the unauthorized access to CPNI at a cost that is reasonable given the technology a carrier already has implemented.

65. By adopting certain specific minimum standards regarding what measures carriers must take to protect the privacy of CPNI, and by committing to taking resolute enforcement action to ensure that the goals of section 222 are achieved, we believe we appropriately balance consumer privacy interests with carriers' interests in minimizing burdens on their customers. Our two-prong approach will (1) allow carriers to implement whatever security measures are warranted in light of their technological choices, (2) create a diversity of security practices that will enable market forces to improve carriers' security measures over time, (3) avoid creating unnecessary regulatory barriers that could impede carriers from adapting to new threats as the methods used by data brokers evolve, and (4) alleviate commenters' concerns that specific safeguard rules could provide pretexters with a "roadmap" of how to obtain CPNI without authorization. We further believe that our two-pronged approach will ensure a high level of privacy protection for CPNI because carriers will have sufficient incentive and ability to adopt whatever security mechanisms work best with their existing systems and procedures.

66. *Carrier Safe Harbor.* We decline to immunize carriers from possible sanction for disclosing customers' private information without appropriate authorization. Some carriers support the adoption of a "safe harbor," which would immunize carriers from liability for improper disclosure of CPNI if the carrier followed certain security guidelines, such as those comparable to the Federal Trade Commission's (FTC's) guidelines for the financial industry.¹⁹⁹ We decline to adopt this proposal because such a rule would result in less protection of customers' CPNI than exists under the status quo. The guidelines the carriers propose to trigger immunity do not add meaningful protections beyond carriers' existing regulatory obligations.²⁰⁰ Therefore, if we adopted the proposed safe harbor, carriers would receive immunity from liability for meeting the requirements set forth in the safe harbor, even if a carrier acted egregiously and in derogation of its general duty to protect CPNI from unauthorized release. The public interest is better served if the Commission retains the option of taking strong enforcement measures regarding carriers' duties under section 222 and the Commission's rules.

V. FURTHER NOTICE OF PROPOSED RULEMAKING

67. The Commission has a duty to ensure that, as technologies evolve, the consumer protection objectives of the Act are maintained. Through this Further Notice of Proposed Rulemaking, we seek comment on whether the Commission should act to expand its CPNI rules further, and whether it should expand the consumer protections to ensure that customer information and CPNI are protected in the context of mobile communication devices.

¹⁹⁹ See, e.g., Cingular Comments at 31-33 (stating that the Commission should follow FTC Safeguards Rule issued pursuant to Section 501(b) of Gramm Leach Bliley Act (15 U.S.C. §6801(b)), and should offer safe harbor inducement to follow standards); Qwest Comments at 2-3 (arguing in favor of safe harbor procedures); AT&T Comments at n.7 (arguing that carriers with good personnel training, audit trails, and adequate customer authentication procedures should enjoy a safe harbor).

²⁰⁰ See, e.g., CTIA Comments at 11 (supporting a safe harbor for carriers that disclose account information to an person who provides a correct password); Qwest Comments at 2-3 (urging the Commission to find that carriers are already subject to the right balance of CPNI regulatory oversight, or alternatively pronounce guidelines that would frame a safe harbor for a carrier incorporating those guidelines into its operating practices).

69. *Audit Trails.* While we did not adopt rules requiring audit trails at this time, in light of our new rules and the recent enactment of criminal penalties against pretexters, we seek comment on whether the Commission should adopt rules pertinent to audit trails. Are audit trails generally used by carriers to track customer contact? We ask carriers to assess the benefits and burdens, including the burdens on small carriers, of recording the disclosure of CPNI and customer contact. Our current record indicates that the broad use of audit trails likely would be of limited value in ending pretexting because such a log would record enormous amounts of data, the vast majority of it being legitimate customer inquiry.²⁰¹ Commenters also report that implementing and maintaining audit trails would be costly with little to no corresponding benefit to the consumer.²⁰² However, would an audit trail assist law enforcement with its criminal investigations against pretexters? Further, in the interim period since we sought comment on this issue, have carriers' reactions to audit trails changed or has the technology changed such that audit trails are now an economically feasible option?

70. *Physical Safeguards.* We also seek comment on whether the Commission, in light of the rules we adopt in this Order and the recent enactment of criminal penalties against pretexters, should adopt rules that govern the physical transfer of CPNI among companies, such as between a carrier and its

²⁰¹ See, e.g., Centennial Reply at 4; CTIA Comments at 14 (stating that even in the case of pretexting, the customer service representatives' annotations would note that CPNI was given out at the customer's request).

²⁰² See, e.g., Charter Comments at 36; Dobson Comments at 6; OPATSCO Comments at 4; TWTC Comments at 14; Verizon Comments at 13. We note that the Commission in the *1999 Reconsideration Order* previously weighed the costs and benefits of establishing audit trails and decided not to require audit trails. See *1999 Reconsideration Order*, 13 FCC Rcd at 8101-02, para. 126.

²⁰³ Commenters may request confidential treatment for the information that they submit in response to this Further Notice if they are concerned about compromising their physical safeguard measures. See 47 C.F.R. § 0.459.

71. *Limiting Data Retention.* We also seek comment on whether the Commission, in light of the rules we adopt in this Order and the recent enactment of criminal penalties against pretexters, should adopt rules that require carriers to limit data retention. If the Commission did adopt such a rule, what should be the maximum amount of time that a carrier should be able to retain customer records? Additionally, should all customer records be eliminated or is there a subset of customer records that are more susceptible to abuse and should be destroyed? Also, should the Commission define exceptions where a carrier is permitted to retain certain records (e.g., for the length of carrier-carrier or carrier-customer disputes)? The Department of Justice argues that destruction of CPNI after a specified period would hamper law enforcement efforts by destroying data sometimes needed for criminal and other lawful investigations.²⁰⁴ We also seek comment on whether there are any state or Commission data retention requirements that might conflict with a carrier's data limitation.²⁰⁵ Additionally, does a limitation on data retention enhance protection of CPNI?²⁰⁶ Alternatively, should the Commission require carriers to de-identify customer records after a certain period?²⁰⁷ We seek comment on the benefits and burdens, including the burdens on small carriers, of requiring carriers to limit their data retention or to de-identify customer records.

B. Protection of Information Stored in Mobile Communications Devices

12. We seek comment on what steps the Commission should take, if any, to secure the privacy of customer information stored in mobile communications devices.²⁰⁸ Specifically, we seek comment on what methods carriers currently use, if any, for erasing customer information on mobile equipment prior to refurbishing the equipment,²⁰⁹ and the extent to which carriers enable customers to permanently erase their personal information prior to discarding the device. We also seek comment on whether the Commission should require carriers to permanently erase, or allow customers to permanently erase, customer information in such circumstances. Should the Commission require manufacturers to configure wireless devices so consumers can easily and permanently delete personal information from those devices? Further, we seek comment on the burdens, including those placed on small carriers, associated with a Commission rule requiring carriers and manufacturers to fully expunge existing customer data from a mobile device at the customer's request.

²⁰⁴ See DOJ/DHS Comments at 3 (stating that CPNI is an invaluable investigative resource, the mandatory destruction of which would severely impact the DOJ/DHS's ability to protect national security and public safety).

²⁰⁵ See, e.g., 47 C.F.R. § 42.6 (requiring that carriers retain telephone toll records for 18 months). § 42.7 (establishing record retention requirements for documents on a carrier's master index of records, and for documents relevant to complaint proceedings and certain Commission inquiries and proceedings).

²⁰⁶ See Cingular Comments at 25-26 (reporting that Cingular's experience is that most data brokers are focusing on the last 100 calls made or calls within the last 90 days).

²⁰⁷ See, e.g., EPIC Petition at 11-12 (suggesting that carriers should "de-identify" records, that is, separate data that identify a particular caller from the general transaction records); *bur* see, e.g., Ohio PUC Comments at 17-18 (arguing that de-identifying records would frustrate customer's ability to dispute billing).

²⁰⁸ See Letter from Governor Rod R. Blagojevich, Governor of Illinois, to Deborah Platt Majoras, Chairperson, Federal Trade Commission, and Kevin J. Martin, Chairman, Federal Communications Commission (dated Sept. 5, 2006); see also Ted Brindis, *Secrets Linger on Old Cell Phones*, Houston Chronicle.com (Aug. 31, 2006) (reporting that someone was able to retrieve a company's plans regarding a multi-million dollar federal transportation contract, bank account information, and passwords from discarded mobile devices).

²⁰⁹ Cell phones may be refurbished and provided to a different customer as a replacement for a cell phone that has malfunctioned. The original customer's private information may remain on the cell phone. See Andrew Brandt, *Privacy Watch: Wipe Your Cell Phone's Memory Before Giving It Away*, PC WORLD, available at <http://www.pcworld.com/printable/article/id,124157/printable.html> (Jan. 30, 2006).

VI. PROCEDURAL MATTERS

A. *Ex Parte* Presentations

73. The rulemaking this Notice initiates shall be treated as a "per se-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²¹⁰ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the **views** and arguments presented generally is required.²¹¹ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.²¹²

B. Comment Filing Procedures

74. Pursuant to sections 1.415 and 1.419 of the Commission's rules,²¹³ interested parties may file comments and reply comments regarding the Notice on or before the dates indicated on the first page of this document. All filings related to this Further Notice of Proposed Rulemaking should refer to CC Docket No. 96-115 and WC Docket No. 04-36. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cph/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- **ECFS filers** must transmit one electronic copy of the comments for CC Docket No. 96-115 and WC Docket No. 04-36. In completing the transmittal screen, filers should include their full name; U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

²¹⁰ 41 C.F.R. §§ 1.200 *et seq.*

²¹¹ 47 C.F.R. § 1.1206(b)(2).

²¹² 47 C.F.R. § 1.1206(b).

²¹³ 47 C.F.R. §§ 1.415, 1.419

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent **to** 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

75. Parties should send a copy of their filings **to** Janice Myles, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-C140, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to janice.myles@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, **Best Copy and Printing, Inc. (BCPI)**, Portals 11, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202)488-5300, or via e-mail to fcc@hcria.eh.com.

76. Documents in CC Docket No. 96-115 and WC Docket No. 04-36 will be available for public inspection and copying during business hours **at** the FCC Reference Information Center, Portals 11, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202)488-5300, facsimile (202)488-5563, TTY (202)488-5562, e-mail fcc@bcpiweb.com.

C. Final Regulatory Flexibility Analysis

77. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The FRFA is set forth in Appendix C.

D. Initial Regulatory Flexibility Analysis

78. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA *is* set forth in Appendix D. Written public comments are requested on this IRFA. Comments must be identified **as** responses **to** the IRFA and must be filed by the deadlines for comments on the Notice provided below in Appendix D.

E. Paperwork Reduction Act

79. This Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited **to** comment on the new information collection requirements contained in this proceeding. In addition, pursuant **to** the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

80. In the Order, we have assessed the burdens placed on small businesses **to** notify customers of account changes, to notify law enforcement and customers of unauthorized CPNI disclosure; to obtain opt-in consent prior to sharing CPNI with joint venture partners and independent contractors; to file annually a CPNI certification with the Commission, including an explanation of any actions taken against data brokers and a summary of all consumer complaints received in the past year concerning the unauthorized release of CPNI, and to extend the CPNI rules to providers of interconnected VoIP services, and find that these requirements do not place a significant burden on small businesses.

81. This Further Notice contains **pi-oposed information collection requirements**. The Commission, as part of its continuing effort to reduce paperwork burdens, invited the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this Further Notice, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Public and agency comments are due 60 days after publication **in** the Federal Register. Comments should address: (a) whether the pi-oposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

F. Congressional Review Act

82. The Commission will send a copy of this Report and Order and Further Notice of Pi-oposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA). *see* 5 U.S.C. § 801(a)(1)(A).

G. Accessible Formats

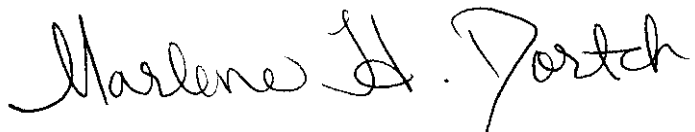
83. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 or TTY: 202-418-0432.

VII. ORDERING CLAUSES

84. Accordingly, IT IS ORDERED that pursuant to sections 1, 4(i), 4(j), 222, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 222, 303(r), this Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 96-115 and WC Docket No. 04-36 IS ADOPTED, and that Part 64 of the Commission's rules, 47 C.F.R. Part 64, is amended as set forth in Appendix B. The Order shall become effective upon publication in the Federal Register subject to OMB approval for new information collection requirements or six months after the Order's effective date, whichever is later.

85. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

Appendix A

Commenters in CC Docket No. 96-115

<u>Comments</u>	<u>Abbreviation</u>
Alexicon Telecommunications Consulting	Alexicon
Alltel Corporation	Alltel
American Association of Paging Carriers	AAPC
American Cable Association	ACA
AT&T Inc.	AT&T
Attorneys General of the Undersigned States	Attorneys General
BellSouth Corporation	BellSouth
Centennial Communications Corp.	Centennial
Charter Communications, Inc.	Charter
Cingular Wireless LLC	Cingular
COMPTEL	COMPTEL
Cross Telephone Company, Cimmaron Telephone Company, Pottawatomie Telephone Company, Chickasaw Telephone, and Salina-Spavinaw Telephone Company	Oklahoma Carriers
Crown Castle International Corp.	Crown Castle
CTIA-The Wireless Association®	CTIA
Dobson Communications Corporation	Dobson
Electronic Privacy Information Center, Consumer Action, Privacy Rights Now Coalition, Center for Digital Democracy, Consumer Federation of America, Privacy Journal, Center for Financial Privacy and Human Rights, and National Consumers League	EPIC <i>et al.</i>
Enterprise Wireless Alliance and the USMSS, Inc.	Enterprise Wireless
Eschelon Telecom, Inc., SNIP Link Inc., and XO Communications, Inc.	Joint Commenters
Global Crossing North America, Inc.	Global Crossing
Infonxx, Inc.	Infonxx
Independent Carrier Group	ICG
Kim Phan	Phan
Leap Wireless International, Inc. and Cricket Communications, Inc.	Leap
McManis & Monsaive Association	MMA
MetroPCS Communications, Inc.	MetroPCS
Microsoft Corporation, Skype Inc. and Yahoo! Inc.	Internet Companies
Myung Kim	K
National Association of State Utility Consumer Advocates	NASUCA
National Cable & Telecommunications Association	NCTA
National Telecommunications Cooperative Association	NTCA
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
NextG Networks, Inc.	NextG
Nicholas Leggett	Leggett
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Pennsylvania Public Utility Commission	PaPUC
Princeton University Students	Princeton Students
Privacy Rights Clearinghouse	Privacy Rights

Public Service Commission of the State of Missouri	MoPSC
Public Utilities Commission of Ohio	Ohio PUC
Qwesi Communications International Inc.	Qwesi
RNK Inc. d/b/a RNK Telecom	RNK
Rural Cellular Association	RCA
Sprini Nexiel Corporation	Sprint Nexiel
TCA, Inc. – Telecom Consulting Associations	TCA
Texas Office of Public Utility Counsel	TX OPUC
Texas Statewide Telephone Cooperative, Inc.	TSTCI
The People of the State of California and the California Public Utilities Commission	CaPUC
Time Warner Inc.	Time Warner
Time Warner Telecom Inc.	TWTC
T-Mobile USA, Inc.	T-Mobile
United States Departments of Justice and Homeland Security	DOJ/DHS
United States Internet Service Provider Association	USISPA
United States Telecom Association	USTelecom
USA Mobility, Inc.	USA Mobility
US LEC Corp.	US LEC
Verizon	Verizon
Verizon Wireless	Verizon Wireless

Reply Commenters in CC Docket No. 96-115

Reply Comments	Abbreviation
AT&T Inc.	AT&T
BellSouth Corporation	BellSouth
Centennial Communications Corp. d/b/a Centennial Wireless	Centennial
Charter Communications, Inc.	Charter
Cingular Wireless LLC	Cingular
CTIA-The Wireless Association®	CTIA
Direct Marketing Association, Inc.	DMA
Dobson Communications Corporation	Dobson
Electronic Privacy Information Center	EPIC
Embarq Corporation	Embarq
Enterprise Wireless Alliance, together with USMSS, Inc.	EWA
Eschelon Telecom, Inc., SNiP LiNK Inc., and XO Communications, Inc.	Joint Commenters
Insite Wireless LLC	Insite
MetroPCS Communications Inc.	MetroPCS
National Association of State Utility Consumer Advocates	NASUCA
Pennsylvania Public Utility Commission	PA PUC
Rock Hill Telephone Company d/b/a Comporium Communications, Fort Mill Telephone Company d/b/a Comporium Communications, and Lancaster Telephone Company d/b/a Comporium Communications	Comporium
Sprint Nexiel Corporation	Sprint Nextel
T-Mobile USA, Inc.	T-Mobile
United States Cellular Corporation	US Cellular

Verizon	Verizon
Verizon Wireless	Verizon Wireless
Virgin Mobile USA, LLC	Virgin Mobile

Comments	Abbreviation
X8, Inc.	X8
AARP	AARP
ACN Communications Services, Inc.	ACN
Ad Hoc Telecommunications Users Committee	Ad Hoc
Alcatel North America	Alcatel
Alliance for Public Technology	APT
America's Rural Consortium	ARC
American Foundation for the Blind	AFB
American Public Communications Council	APCC
Amherst, Massachusetts Cable Advisory Committee	Amherst CAC
Arizona Corporation Commission	Arizona Commission
Arctic Slope Telephone Association Cooperative, Inc. Cellular Mobile Systems of St. Cloud, LLC d/b/a Cellular 2000 Comanche County Telephone, Inc. DeKalb Telephone Cooperative, Inc. d/b/a DTC Communications Grand River Mutual Telephone Corporation Interstate 35 Telephone Company KanOkla Telephone Association, Inc. Siskiyou Telephone Company Utah Basin Telecommunications Association, Inc. Vermont Telephone Company, Inc. Wheat State Telephone, Inc.	Arctic Slope <i>et al.</i>
Association for Communications Technology Professionals in Higher Education	ACUTA
Association for Local Telecommunications Services	ALTS
Association of Public-Safety Communications Officials International, Inc.	APCO
AT&T Corporation	AT&T
Attorney General of the State of New York	New York Attorney General
Avaya, Inc.	Avaya
BellSouth Corporation	BellSouth
Bend Broadband Cebirge Connections, Inc. Insight Communications Company, Inc. Susquehanna Communication	Bend Broadband <i>et al.</i>
Boulder Regional Emergency Telephone Service Authority	BRETSA
BT Americas Inc.	BTA
Cablevision Systems Corp.	Cablevision
Callipso Corporation	Callipso
Cheyond Communications, LLC GlobalCom, Inc.	Cheyond <i>et al.</i>

MPower Communications, Corp.	
CenturyTel, Inc.	CenturyTel
Charter Communications	Charter
<i>Cheyenne River Sioux Tribe Telephone Authority</i>	<i>Cheyenne Telephone Authority</i>
Cisco Systems, Inc.	Cisco
Citizens Utility Board	CUB
City and County of San Francisco	San Francisco
City of New York	New York City
Comcast Corporation	Comcast
Communication Service for the Deaf, Inc.	CSD
Communications Workers of America	CWA
CompTel/ASCENT	CompTel
Computer & Communications Industry Association	CCIA
Computing Technology Industry Association	CompTIA
Consumer Electronics Association	CEA
Covad Communications	Covad
Cox Communications, Inc.	Cox
CTIA-The Wireless Association	CTIA
Department of Homeland Security	DHS
DialPad Communication, Inc. ICG Communications, Inc. Qovia, Inc. VoicePulse, Inc.	Dialpad <i>et al.</i>
DJE Teleconsulting, LLC	DJE
Donald Clark Jackson	Jackson
EarthLink, Inc.	EarthLink
EDUCAUSE	EDUCAUSE
Electronic Frontier Foundation	EFF
Enterprise Communications Association	ECA
Federation for Economically Rational Utility Policy	FERUP
Francois D. Menard	Menard
Frontier and Citizens Telephone Companies	Frontier/Citizens
General Communications, Inc.	GCI
Global Crossing North America, Inc.	Global Crossing
GVNW Consulting, Inc.	GVNW
ICORE, Inc.	ICORE
IEEE-USA	IEEE-USA
Illinois Commerce Commission	Illinois Commerce Commission
Inclusive Technologies	Inclusive Technologies
Independent Telephone & Telecommunications Alliance	ITTA
Information Technology Association of America	ITAA
Information Technology Industry Council	ITIC
Interstate Telcom Consulting, Inc.	ITCI
Ionary Consulting	Ionary
Iowa Utilities Board	Iowa Commission
King County E911 Program	King County
Level 3 Communications LLC	Level 3
Lucent Technologies Inc.	Lucent Technologies
Maine Public Utilities Commissioners	Maine Commissioners
MCI	MCI

Microsoft Corporation	Microsoft
Minnesota Public Utilities Commission	Minnesota Commission
Montana Public Service Commission	Montana Commission
Motorola, Inc.	Motorola
National Association of Regulatory Utility Commission	NARUC
National Association of State Utility Consumer Advocates	NASUCA
National Association of Telecommunications Officers and	NATOA <i>et al.</i>
National Cable & Telecommunications Association	NCTA
National Consumers League	NCL
National Emergency Number Association	NENA
National Exchange Carrier Association, Inc.	NECA
National Governors Association	NGA
National Grange	National Grange
National Telecommunications Cooperative Association	NTCA
Nebraska Public Service Commission	Nebraska Commission
Nebraska Rural Independent Companies	Nebraska Rural Independent Companies
Net2Phone, Inc.	Net2Phone
New Jersey Board of Public Utilities	New Jersey Commission
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
New York State Department of Public Service	New York Commission
NexVortex, Inc.	nexVortex
Nortel Networks	Nortel
Nuvio Corporation	Nuvio
Office of Advocacy, U.S. Small Business Administration	SBA
Office of the Attorney General of Texas	Texas Attorney General
Office of the People's Counsel for the District of Columbia	D.C. Counsel
Ohio Public Utilities Commission	Ohio Commission
Omnitor	Omnitor
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Pac-West Telecomm, Inc.	Pac-West
People of the State of California and the California Public Utilities Commission	California Commission
Public Service Commission of the State of Missouri	Missouri Commission
PublicService.com	PublicService.com

Qwest Communications International Inc.	Qwest
Rehabilitation Engineering Research Center on Telecommunications Access	RERCTA
Rural Independent Competitive Alliance	RICA
SBC Communications, Inc.	SBC
Self Help for Hard of Hearing People	SHHHP
Skype, Inc.	Skype
Sonic.net, Inc.	Sonic.net
SPI Solutions, Inc.	SPI Solutions
Spokane County 911 Communications	Spokane County 911
Sprint Corporation	Sprint
TCA, Inc. – Telecom Consulting Associates	TCA
Telecommunications for the Deaf, Inc	TDI
Telecommunications Industry Association	TIA
Tellme	Tellme Networks
Tennessee Regulatory Authority	TRA
Texas Coalition of Cities for Utility Issues	TCCFUL
Texas Commission on State Emergency Communications.	TCSEC
Texas Department of Information Resources	Texas DIR
Time Warner Inc.	Time Warner
Time Warner Telecom	TWTC
TracFone Wireless, Inc.	TracFone
UniPoint Enhanced Services Inc. d/b/a PointOne	PointOne
United States Conference of Catholic Bishops Alliance for Community Media Appalachian People's Actions Coalition Center for Digital Democracy Consumer Action Edgemont Neighborhood Coalition Migrant Legal Action Program	USCCB <i>et al.</i>
United States Department of Justice	
United States Telecom Association	USTA
United Telecom Council The United Power Line Council	UTC <i>et al.</i>
USA Datanet Corporation	USAD Datanet
Utah Division of Public Utilities	Utah Commission
Valor Telecommunications of Texas, L.P. and Iowa Telecommunications Services, Inc.	Valor <i>et al.</i>
VeriSign, Inc.	VeriSign
Verizon Telephone Company	Verizon
Vermont Public Service Board	Vermont
Virgin Mobile USA, LLC	Virgin Mobile
Virginia State Corporation Commission	Virginia Commission
Voice on the Net Coalition	VON Coalition
Vonage Holdings Corp	Vonage
Western Telecommunications Alliance	WTA
WilTel Communications, LLC	WilTel
Wisconsin Electric Power Company Wisconsin Gas	Wisconsin Electric <i>et al.</i>
Yellow Pages Integrated Media Association	YPIMA

Z-Tel Communications, Inc.

Z-Tel

Reply Commenters in WC Docket No. 04-36

Reply Comments	Abbreviation
8X8, Inc.	8X8
Ad Hoc Telecom Manufacturer Coalition	Ad Hoc Telecom Manufacturers Coalition
Ad Hoc Telecommunications Users Committee	Ad Hoc
Adam D. Thierer, Director of Telecommunications Studies, Cato Institute	Thierer
Alcatel North America	Alcatel
Alliance for Public Technology et al.	APT <i>et al.</i>
American Cable Association	ACA
American Electric Power Service Corporation Duke Energy Corporation Xcel Energy Inc.	American Electric Power <i>et al.</i>
Association for Local Telecommunications Services	ALTS
AT&T Corp.	AT&T
Avaya Inc.	Avaya
BellSouth Corporation	BellSouth
Broadband Service Providers Association	BSPA
Cablevision Systems Corp.	Cablevision
Callipso Corporation	Callipso
Central Station Alarm Association	CSAA
Cingular Wireless LLC	Cingular
Cisco Systems, Inc.	Cisco
City and County of San Francisco	San Francisco
Comcast Corporation	Comcast
CompTel/Ascent	CompTel
Consumer Electronics Association	CEA
Consumer Federation of America Consumers Union	CFA <i>et al.</i>
Covad Communications	Covad
CTC Communications Corp.	CTS
CTIA-The Wireless Association	CTIA
Department of Defense	DoD
Donald Clark Jackson	Jackson
EarthLink, Inc.	EarthLink
Educause	Educause
Enterprise Communications Association	ECA
Ericsson Inc.	Ericsson
Florida Public Service Commission	Florida Commission
Francois D. Menard	Menard
General Communication (GCI)	GCI
Global Crossing North America, Inc.	Global Crossing
Independent Telephone & Telecommunications Alliance	ITTA
Information Technology Association of America	Information Technology Association of America
Intergovernmental Advisory Committee	IAC
Intrado Inc.	Intrado
Knology, Inc.	Knology

Level 3 Communications LLC	Level 3
Massachusetts Office of the Attorney General	Massachusetts Attorney General
MCI	MCI
Montana Public Service Commission	Montana Commission
Motorola, Inc.	Motorola
National Association of State Utility Consumer Advocates	NASUCA
National Association of Telecommunications Officers and National League of Cities National Association of Counties U.S. Conference of Mayors National Association of Towns and Townships Texas Coalition of Cities for Utility Issues Washington Association of Telecommunications Officers and Advisors Greater Metro Telecommunications Consortium Mr. Hood Cable Regulatory Commission Metropolitan Washington Council of Governments Rainier Communications Commission City of Philadelphia City of Tacoma, Washington Montgomery County, Maryland	NATOA <i>et al.</i>
National Cable & Telecommunications Association	NCTA
National Emergency Number Association	NENA
National Exchange Carrier Association, Inc.	NECA
Nebraska Public Service Commission	Nebraska Commission
Nebraska Rural Independent Companies	Nebraska Rural Independent Companies
Net2Phone, Inc.	Net2Phone
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
New York State Department of Public Service	New York Commission
Nextel Communications, Inc.	Nextel
Nuvio Corporation	Nuvio
Office of the People's Counsel for the District of Columbia	D.C. Counsel
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Pac-West Telecomm, Inc.	Pac-West
Pennsylvania Public Utility Commission	Pennsylvania Commission
Public Service Commission of Wisconsin	Wisconsin Commission
Qwest Communications International Inc.	Qwest
Regulatory Studies Program (RSP) of the Mercatus Center at George Mason University	Mercatus Center
Rehabilitation Engineering Research Center on Telecommunications Access	RERCTA
RNKL, Inc. d/b/a RNK Telecom	RNK
Rural Independent Competitive Alliance	RICA
SBC Communications Inc.	SBC
Skype, Inc.	Skype
Southern Communications Services, Inc. d/b/a Southern LINC	Southern LINC
Sprint Corporation	Sprint

Telecommunications Industry Association	TIA
Tellme Networks, Inc.	Tellme Networks
Texas Statewide Telephone Cooperative, Inc.	Texas Statewide Telephone Cooperative
Time Warner Telecom, Inc.	Time Warner Telecom
T-Mobile USA, Inc.	T-Mobile
TracFone Wireless, Inc.	TracFone
United States Conference of Catholic Bishops Alliance for Community Media Appalachian Peoples' Action Coalition Center for Digital Democracy Consumer Action Edgemont Neighborhood Coalition Migrant Legal Action Program	USCCB <i>et al.</i>
United States Department of Justice	DOJ
United States Telecom Association	USTA
USA Datanet Corporation	USA Datanet
Utah Division of Public Utilities	Utah Commission
VeriSign, Inc.	VeriSign
Verizon Telephone Companies	Verizon
Voice on the Net Coalition	VON Coalition
Wisconsin Department of Public Instruction	Wisconsin Department of Public Instruction

Appendix B

Final Rules

Subpart U of Part 64, of Title 47 of the Code of Federal Regulations is amended to read as follows:

SUBPART U – CUSTOMER PROPRIETARY NETWORK INFORMATION

I. Section 64.2003(k) is amended to read as follows:

(k) *Telecommunications carrier or carrier.* The terms “telecommunications carrier” or “carrier” shall have the same meaning as set forth in section 3(44) of the Communications Act of 1934, as amended, 47 U.S.C. 153(44). For the purposes of this Subpart, the term “telecommunications carrier” or “carrier” shall include “interconnected VoIP provider” as that term is defined in section 9.3 of these rules.

2. Section 64.2003 is amended by redesignating paragraphs (a)-(l) and by adding the following paragraphs:

(a) *Account information.* “Account information” is information that is specifically connected to the customer’s service relationship with the carrier, including such things as an account number or any component thereof, the telephone number associated with the account, or the bill’s amount.

(b) *Address of record.* An “address of record,” whether postal or electronic, is an address that the carrier has associated with the customer’s account for at least 30 days.

(d) *Call detail information.* Any information that pertains to the transmission of specific telephone calls- including, for outbound calls, the number called, and the time, location, or duration of any call and, for inbound calls, the number from which the call was placed, and the time, location, or duration of any call.

(l) *Readily available biographical information.* “Readily available biographical information” is information drawn from the customer’s life history and includes such things as the customer’s social security number, or the last four digits of that number; mother’s maiden name; home address; or date of birth.

(p) *Telephone number of record.* The telephone number associated with the underlying service, not the telephone number supplied as a customer’s “contact information.”

(q) *Valid photo ID.* A “valid photo ID” is a government-issued means of personal identification with a photograph such as a driver’s license, passport, or comparable ID that is not expired.

3. Section 64.2005(c)(3) is amended to read as follows:

(3) LECs, CMRS providers, and interconnected VoIP providers may use CPNI, without customer approval, to market services formerly known as adjunct-to-basic services, such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features.

4. Section 64.2007 is amended by deleting paragraphs (b)(2) and (b)(3), and revising paragraph (b)(1) to read as follows:

(b) *Use of Opt-Out and Opt-In Approval Processes.* A telecommunications carrier may, subject to opt-out approval or opt-in approval, use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer. A telecommunications carrier may, subject to opt-out approval or opt-in approval, disclose its customer's individually identifiable CPNI for the purpose of marketing communications-related services to its agents and its affiliates that provide communications-related services. A telecommunications carrier may also permit such persons or entities to obtain access to such CPNI for such purposes. Except for use and disclosure of CPNI that is permitted without customer approval under section § 64.2005, or that is described in this paragraph, or as otherwise provided in section 222 of the Communications Act of 1934, as amended, a telecommunications carrier may only use, disclose, or permit access to its customer's individually identifiable CPNI subject to opt-in approval.

5. Section 64.2009 is amended by revising paragraph (e) to read as follows:

(e) A telecommunications carrier must have an officer, as an agent of the carrier, sign and file with the Commission a compliance certificate on an annual basis. The officer must state in the certification that he or she has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart. In addition, the carrier must include an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI. This filing must be made annually with the Enforcement Bureau on or before March 1 in EB Docket No. 06-36, for data pertaining to the previous calendar year.

6. Section 64.2010 is added to read as follows:

§ 64.2010 Safeguards on the disclosure of customer proprietary network information

- (a) *Safeguarding CPNI.* Telecommunications carriers must take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI. Telecommunications carriers must properly authenticate a customer prior to disclosing CPNI based on customer-initiated telephone contact, online account access, or an in-store visit.
- (b) *Telephone access to CPNI.* Telecommunications carriers may only disclose call detail information over the telephone, based on customer-initiated telephone contact, if the customer first provides the carrier with a password, as described in paragraph (e) of this section, that is not prompted by the carrier asking for readily available biographical information, or account information. If the customer does not provide a password, the telecommunications carrier may only disclose call detail information by sending it to the customer's address of record, or, by calling the customer at the telephone number of record. If the customer is able to provide call detail information to the telecommunications carrier during a customer-initiated call without the telecommunications carrier's assistance, then the telecommunications carrier is permitted to discuss the call detail information provided by the customer.
- (c) *Online access to CPNI.* A telecommunications carrier must authenticate a customer without the use of readily available biographical information, or account information, prior to